

1 UNITED STATES DISTRICT COURT  
2 DISTRICT OF NEVADA

3 \* \* \*

4 JESSICA AURIEMMA and  
5 CHARLETTE AURIEMMA,

6 Plaintiffs,

7 v.

8 STATE FARM MUTUAL AUTOMOBILE  
INSURANCE COMPANY,

9 Defendant.

Case No. 2:15-cv-00678-APG-NJK

**ORDER (1) DENYING PLAINTIFFS’  
MOTION TO REMAND, (2) DENYING  
PLAINTIFFS’ MOTION TO  
CONTINUE, AND (3) GRANTING  
DEFENDANT’S MOTION FOR  
SUMMARY JUDGMENT**

(ECF Nos. 27, 29, 30)

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12 Plaintiffs Jessica and Charlette Auriemma sue State Farm Mutual Automobile Insurance  
13 Company (“State Farm”) for breach of contract based on its refusal to pay the policy limits of  
14 Jessica’s Uninsured Motor Vehicle Coverage (“UMVC”). ECF No. 1-1 at 11. The plaintiffs also  
15 allege that State Farm breached the implied covenant of good faith and fair dealing, violated the  
16 Nevada Unfair Claims Practices Act, and was unjustly enriched. *Id.* at 12-14. The plaintiffs seek  
17 compensatory and punitive damages. *Id.* at 14.

18 The parties stipulated to dismiss all extra-contractual claims with prejudice. ECF No. 26.  
19 State Farm now moves for summary judgment on the remaining breach of contract claim, arguing  
20 that the plaintiffs breached the terms of Jessica’s policy by not providing pertinent medical  
21 information and by failing to cooperate with State Farm before taking legal action against it.  
22 State Farm contends that it therefore should be relieved of its duties to pay the policy limits.  
23 Alternatively, State Farm seeks to dismiss the plaintiffs’ claims for special damages beyond their  
24 initial medical expenses. State Farm argues that the plaintiffs cannot prove that their subsequent  
25 medical treatment was required as a result of the accident in question.

26 The plaintiffs did not file an opposition to State Farm’s summary judgment motion. Over  
27 a month after the response deadline expired, the plaintiffs moved to remand the case to state  
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1 court, arguing that the amount in controversy fell below \$75,000 after the parties stipulated to  
2 dismiss the extra-contractual claims. The plaintiffs also moved to extend the time to respond to  
3 State Farm's summary judgment motion until after their motion to remand is decided.

4 I deny the plaintiffs' motion to remand because jurisdiction was proper upon removal and  
5 subsequent changes in the amount in controversy do not deprive the court of diversity  
6 jurisdiction. I deny the plaintiffs' motion to extend time because the plaintiffs did not  
7 demonstrate that their failure to timely respond was the result of excusable neglect. Viewing the  
8 evidence in a light most favorable to the plaintiffs, no genuine dispute remains that Jessica and  
9 Charlette Auriemma failed to comply with the terms of Jessica's policy and failed to fulfill their  
10 contractual obligations before taking legal action against the insurer. I thus grant State Farm's  
11 motion for summary judgment against Jessica and Charlette Auriemma.

## 12 **I. BACKGROUND**

13 This case arises out of a car accident that allegedly injured both plaintiffs. Jessica and  
14 Charlette Auriemma were stopped at a red light when they were rear-ended by a driver who left  
15 the area before being identified. ECF No. 27-19 at 21-22. Jessica, the driver, was insured by a  
16 State Farm UMVC policy for accidents caused by an uninsured driver. ECF No. 27-3 at 5, 24.

17 Jessica's UMVC policy with State Farm covers her and any other person occupying her  
18 car. ECF No. 27-3 at 24. Charlette is covered because she was in Jessica's car at the time of the  
19 accident. The policy's "Insured's Duties" section requires the insured to cooperate with State  
20 Farm, and "when asked, assist [State Farm] in . . . securing and giving evidence." *Id.* at 36. A  
21 claimant also must "notify [State Farm] of the claim and give [the company] all the details about  
22 the death, injury, treatment, and other information that [it] may need as soon as reasonably  
23 possible after the injured insured is first examined or treated for the injury." *Id.* at 37. The  
24 provision also requires that the insured provide written authorization for State Farm to obtain  
25 medical bills, medical records, and "any other information [State Farm] deem[s] necessary to  
26 substantiate the claim." *Id.* Further, the policy's "Legal Action Against Us" provision states that  
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1 “[l]egal action may not be brought against . . . [State Farm] until there has been full compliance  
2 with all the provisions of this policy.” *Id.* at 40.

3 The plaintiffs notified State Farm of the accident on the day it occurred, March 23, 2013.  
4 ECF No. 27-19 at 18, 39. A few days later, State Farm sent Jessica a letter informing her of her  
5 Medical Payments Coverage and UMVC, and enclosed three forms for her to fill out and return:  
6 an authorization for release of medical information, a medical provider list, and a questionnaire  
7 about potential resulting injuries. ECF No. 27-5. State Farm sent her another letter the next day  
8 discussing the UMVC and including the same attachments. ECF No. 27-6. Although Jessica  
9 initially told State Farm that Charlette had not been injured in the accident, the company received  
10 treatment notes from Charlette’s chiropractor on April 15, 2013, and added her to Jessica’s claim.  
11 ECF. No. 27-4 at 7.

12 On September 16, 2013, State Farm followed up with both plaintiffs by resending  
13 information regarding their UMVC claims and again providing the injury questionnaire, medical  
14 provider list, and authorization to obtain medical records for the plaintiffs to complete and return.  
15 ECF No. 27-9. In those letters, State Farm quoted relevant provisions of Jessica’s policy which  
16 require a claimant to provide authorization for medical records and other information necessary  
17 for the insurer to substantiate a claim. *Id.* State Farm’s claim file shows that on October 4, 2013,  
18 it received returned mail it had sent to Jessica, and that it would re-send that mail after obtaining  
19 the correct address. ECF No. 27-4 at 5. The report does not indicate on which date the returned  
20 mail was initially sent. *Id.*

21 State Farm received a letter of representation from the plaintiffs’ counsel, dated November  
22 1, 2013. ECF No. 27-10. It responded with a letter of acknowledgment and this time sent the  
23 injury questionnaire, authorization for medical records, and medical provider list to the plaintiffs’  
24 counsel, along with requested policy information. ECF. No. 27-11. In that correspondence, State  
25 Farm specifically requested a list of all medical providers that had treated the plaintiffs after the  
26 accident. *Id.* Having received no response, it again requested the same documentation from the  
27 plaintiffs and their counsel on February 8, 2014. ECF No. 27-12.  
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1 On April 4, 2014, Charlette's counsel sent a letter to State Farm stating a demand in the  
2 amount of \$55,245.00 and agreeing to accept the \$25,000.00 policy limit. ECF No. 27-13. State  
3 Farm replied with a letter that reminded the plaintiffs of their duty to cooperate with the company  
4 under the policy and asked for additional time to evaluate the claim once a police report of the  
5 accident was obtained. ECF No. 27-14. State Farm sent another letter to the plaintiffs' counsel  
6 nearly two weeks later, reminding the plaintiffs of their duty to cooperate and requesting recorded  
7 statements from the plaintiffs because State Farm was not provided with a police report. ECF No.  
8 27-15.

9 On December 8, 2014, Jessica's counsel sent a letter on her behalf stating that a demand  
10 of \$53,265.00 is appropriate and warranted, and agreeing to accept the policy limit of \$25,000 to  
11 prevent litigation. ECF No. 27-16. The next day, State Farm again requested the same documents  
12 it previously requested. ECF No. 27-17.

13 At her deposition, Jessica testified that she filled out forms from State Farm regarding her  
14 claim. ECF No. 27-22 at 27. She stated that she believes she filled out the authorization for  
15 release of information, the list of providers who treated her for injuries sustained from this  
16 accident, and an injury questionnaire, and she believes she returned them to State Farm. *Id.* at 27-  
17 28. However, she did not recall filling out a form providing information about "all current and  
18 past medical providers and health carrier information." *Id.* at 28. She did not state whether she  
19 filled out and returned those forms before or after she filed this lawsuit.

20 Charlette testified that she completed and gave the list of her past medical providers to her  
21 attorneys. ECF No. 27-19 at 33. She also stated that she never received any forms to fill out from  
22 State Farm. *Id.* at 33, 58. However, Charlette asserted that she has cooperated with State Farm,  
23 and remarked several times that if they asked her for any information, she either had or would  
24 have given it to them. *Id.* at 59-61.

25 The plaintiffs sued State Farm on February 16, 2015. ECF No. 1-1 at 8. State Farm  
26 removed the case based on diversity jurisdiction. ECF No. 1. After removal, the parties stipulated  
27 to dismiss all of the plaintiffs' extra-contractual claims with prejudice. ECF No. 26. The  
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1 stipulation left only the breach of contract claim, limiting the damages to those provided in  
2 Jessica's UMVC policy. That policy has limits of \$25,000 per person and \$50,000 per accident.  
3 ECF No. 27-3 at 3.

4 State Farm now moves for summary judgment. The plaintiffs move to remand the case to  
5 state court and to extend time to respond to State Farm's summary judgment motion until after  
6 the motion to remand is decided.

## 7 **II. ANALYSIS**

### 8 **A. Plaintiffs' motion to remand**

#### 9 **1. Reducing the amount in controversy below the required amount**

#### 10 **subsequent to proper removal does not destroy diversity jurisdiction.**

11 After the parties dismissed the plaintiffs' extra-contractual claims, the amount in  
12 controversy became the \$50,000 per accident limit in Jessica's UMVC policy. The plaintiffs thus  
13 argue that this case should be remanded to state court because 28 U.S.C. § 1447(c) requires  
14 remand if the court lacks subject matter jurisdiction at any time before final judgment. The  
15 plaintiffs also argue that they are entitled to attorney's fees under that statute, which allows the  
16 court to require payment of costs resulting from an improper removal. *Id.* State Farm responds  
17 that the stipulation occurred after proper removal, and it therefore does not change the court's  
18 jurisdiction over this case.

19 "[D]iversity jurisdiction is determined at the time [an] action commences, and a federal  
20 court is not divested of jurisdiction . . . if the amount in controversy subsequently drops below the  
21 minimum jurisdictional level." *Hill v. Blind Indus. & Servs. of Maryland*, 179 F.3d 754, 757 (9<sup>th</sup>  
22 Cir. 1999) (citing *St. Paul Mercury Indem. Co. v. Red Cab Co.*, 303 U.S. 283, 293-95 (1938)).  
23 Specifically, if a plaintiff stipulates to reduce the amount in controversy below the amount  
24 required for jurisdiction, the court is not deprived of that jurisdiction. *St. Paul Mercury*, 303 U.S.  
25 at 292.

26 For this court to have subject matter jurisdiction based on diversity of citizenship, the case  
27 must be between citizens of different states, and the amount in controversy must exceed \$75,000.  
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1 28 U.S.C. § 1332(a). State Farm is an Illinois corporation with its headquarters in that state, and  
2 plaintiffs are citizens of Nevada. ECF No. 1 at 2. The parties therefore are diverse. As discussed  
3 below, State Farm satisfied its burden of proving that the amount in controversy was satisfied.  
4 Because the stipulation lowering the amount in controversy occurred after proper removal, this  
5 court retains subject matter jurisdiction over this case. Therefore, I deny the plaintiffs' motion to  
6 remand, and because I deny remand I also deny their request for attorney's fees.

## 7 **2. Removal was proper.**

8 Plaintiffs moved to remand asserting only that the amount in controversy is now lower  
9 than \$75,000. But I have an independent obligation to ensure that this court has jurisdiction.  
10 *Arbaugh v. Y&H Corp.*, 546 U.S. 500, 514 (2006) (citing *Ruhrgas AG v. Marathon Oil Co.*, 526  
11 U.S. 574, 583 (1999)). Consequently, I will evaluate whether removal was proper at the outset.

12 "Federal courts are courts of limited jurisdiction." *Kokkonen v. Guardian Life Ins. Co. of*  
13 *Am.*, 511 U.S. 375, 377 (1994). Under 28 U.S.C. § 1332(a)(1), a federal district court has original  
14 jurisdiction "where the matter in controversy exceeds the sum or value of \$75,000, exclusive of  
15 interest and costs, and is between citizens of different states." A defendant may remove a suit  
16 filed in state court that falls within the federal court's original jurisdiction. 28 U.S.C. § 1441(a).

17 The removing defendant bears the burden of establishing federal jurisdiction, including  
18 any applicable amount in controversy requirement. *Gaus v. Miles, Inc.*, 980 F.2d 564, 566 (9<sup>th</sup>  
19 Cir. 1992). This burden is generally satisfied where the plaintiff claims a total amount of  
20 damages greater than the amount required to establish jurisdiction. *Id.* But where a complaint  
21 does not specify the amount of damages sought, the removing party must prove by a  
22 preponderance of the evidence that the amount in controversy satisfies the jurisdictional  
23 requirement. *Sanchez v. Monumental Life Ins. Co.*, 102 F.3d 398, 404 (9<sup>th</sup> Cir. 1996). In  
24 attempting to do so, a defendant may aggregate all of a plaintiff's claims to reach the amount  
25 required for proper removal. *Hunter v. United Van Lines*, 746 F.2d 635, 650 (9<sup>th</sup> Cir. 1984). But  
26 separate and distinct claims by different plaintiffs may not be aggregated to satisfy the amount in  
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1 controversy requirement.<sup>1</sup> *Urbino v. Orkin Serv's of Cal., Inc.*, 726 F.3d 1118, 1122 (9<sup>th</sup> Cir.  
2 2013).

3 Here, the complaint did not specify the amount in controversy. ECF No. 1-1. To establish  
4 the jurisdictional amount of \$75,000, State Farm pointed to the following amounts from the  
5 plaintiffs' complaint: \$27,830 for Charlette's or \$23,265 for Jessica's medical bills; a demand of  
6 \$25,000 per plaintiff for the policy limits; and damages in excess of \$10,000 for each claim for  
7 breach of the implied covenant of good faith and fair dealing, violations of the Nevada Unfair  
8 Claims Practices Act, and unjust enrichment. ECF Nos. 1 at 2; 1-1 at 9-14. Additionally, because  
9 the plaintiffs sought unspecified punitive damages based on bad faith, State Farm provided  
10 punitive damage awards from other cases. ECF No. 1 at 2-3.

11 Counsel for Charlette submitted a demand letter on her behalf to State Farm for the  
12 amount of \$55,245 and noted that Charlette anticipated future medical expenses. ECF No. 27-13  
13 at 2-3. Counsel for Jessica submitted a demand letter on her behalf for \$53,265, again noting the  
14 anticipation of future medical expenses. ECF No. 27-16 at 2-3. Considering the amounts the  
15 plaintiffs demanded for settlement, the alleged amounts of their medical expenses, and the fact  
16 that after those amounts were demanded, the plaintiffs added three claims and a request for  
17 punitive damages,<sup>2</sup> State Farm established by a preponderance of the evidence that the amount in  
18 controversy as to each plaintiff exceeded \$75,000 at the time of removal.

19 Because the parties were diverse and the amount in controversy at the time of removal  
20 more likely than not was above the jurisdictional amount, this case was properly removed under  
21 28 U.S.C. § 1332(a). This court has jurisdiction.

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23 <sup>1</sup> Aggregation of claims between parties is appropriate only where a defendant owes an obligation  
24 to the plaintiffs as a group instead of owing it to them separately. *Gibson v. Chrysler Corp.*, 261 F.3d 927,  
25 944 (9<sup>th</sup> Cir. 2001). This typically involves a single indivisible interest that cannot be adjudicated without  
26 affecting the rights of the others involved. *Id.* at 944-45. Here, although the claims surround a single  
policy with a limit of \$50,000 per accident, each plaintiff seeks compensation for her own injuries and  
may be separately entitled to up to \$25,000 each. The plaintiffs' claims are separate and distinct because,  
if found liable, State Farm owes a separate duty to each plaintiff based on her own injuries.

27 <sup>2</sup> "[P]unitive damages are part of the amount in controversy in a civil action." *Gibson v. Chrysler*  
28 *Corp.*, 261 F.3d 927, 945 (9<sup>th</sup> Cir. 2001). Nevada law allows for the recovery of punitive damages for bad  
faith insurance claims. Nev. Rev. Stat. §§ 42.005(1), (2)(b).



**B. Plaintiffs' motion to extend time**

Under the Local Rules, “[a] motion or stipulation to extend time must state the reasons for the extension requested.” LR IA 6-1(a). If the request is made after a deadline for the movants’ response, that request will not be granted unless the moving attorney or party “demonstrates that the failure to file the motion before the deadline expired was the result of excusable neglect.” *Id.* “[E]xcusable neglect” is an equitable question for the court, considering “all relevant circumstances surrounding the party’s omission.” *Briones v. Riviera Hotel & Casino*, 116 F.3d 379, 381 (9<sup>th</sup> Cir. 1997) (quoting *Pioneer Inv. Svcs. Co. v. Brunswick Assoc. Ltd. P’ship*, 507 U.S. 380, 395 (1993)). Courts use the following factors to determine whether a party’s omission should be considered excusable neglect: the danger of prejudice to the other party; the length and impact of the delay on judicial proceedings; the reason for delay and whether it was reasonably within the party’s control; and whether the party acted in good faith. *Id.*

State Farm filed its summary judgment motion on December 17, 2015. ECF No. 27. The plaintiffs had 21 days after the motion was served upon them to respond. LR 7-2(b). The plaintiffs did not file an opposition or a motion to continue within 21 days. Instead, on March 1, 2016 they filed their motion to continue and motion to remand. ECF Nos. 29, 30.

The plaintiffs argue that the court has no subject-matter jurisdiction and that a communication breakdown between the plaintiffs and their counsel prevented the timely filing of a response. They thus request that I grant additional time for them to file an opposition. State Farm has not identified any prejudice it would suffer and there is no evidence of bad faith. However, the plaintiffs’ failure to file an opposition even at this late date is unexplained; allowing additional briefing would delay the proceedings further if the schedule were extended. The filing of a timely opposition was entirely within the plaintiffs’ control. The plaintiffs could have moved for an extension before the deadline if there was an issue regarding attorney-client communication. Additionally, nothing prevented them from challenging subject-matter jurisdiction before the response deadline expired. They also could have provided an opposition along with the extension motion, which was filed long after the response deadline had already



1 expired. They did none of these things. Under these circumstances, I find no excusable neglect  
2 and I deny the plaintiffs' motion to extend.

### 3 **C. State Farm's motion for summary judgment<sup>3</sup>**

4 "The purpose of summary judgment is to avoid unnecessary trials when there is no dispute  
5 as to the facts before the court." *Nw. Motorcycle Ass'n v. U.S. Dep't of Agric.*, 18 F.3d 1468,  
6 1471 (9<sup>th</sup> Cir. 1994). Summary judgment is appropriate when admissible evidence shows "that  
7 there is no genuine dispute as to any material fact and the movant is entitled to judgment as a  
8 matter of law." Fed. R. Civ. P. 56(a); (c)(1)(A). In considering a motion for summary judgment,  
9 "all reasonable inferences are drawn in favor of the non-moving party." *In re Slatkin*, 525 F.3d  
10 805, 810 (9<sup>th</sup> Cir. 2008) (citing *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 255 (1986)).

11 In deciding a motion for summary judgment, the court applies a burden-shifting analysis.  
12 The moving party has the initial burden of demonstrating the absence of a genuine issue of fact,  
13 and "must come forward with evidence which would entitle it to a directed verdict if the evidence  
14 went uncontroverted at trial." *C.A.R. Transp. Brokerage Co. v. Darden Rests., Inc.*, 213 F.3d 474,  
15 480 (9<sup>th</sup> Cir. 2000) (quotation omitted). If the moving party fails to meet its initial burden,  
16 summary judgment must be denied and the court need not consider the nonmoving party's  
17 evidence. *See Adickes v. S.H. Kress & Co.*, 398 U.S. 144, 160 (1970). But if the moving party  
18 satisfies its initial burden, the burden then shifts to the opposing party to establish that a genuine  
19 issue of material fact exists. *See Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574,  
20 586-87 (1986). To do so, a party need not resolve a material issue in its favor, but must bring  
21 forth specific facts which would allow a reasonable jury to return a verdict in its favor. *T.W. Elec.*  
22 *Serv., Inc. v. Pac. Elec. Contractors Ass'n*, 809 F.2d 626, 631 (9<sup>th</sup> Cir. 1987). At the summary  
23 judgment stage, the court's function is not to weigh the evidence or its credibility, but to  
24 determine whether there is a genuine issue for trial. *See Anderson*, 477 U.S. at 255.

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26 <sup>3</sup> State Farm argues that under Local Rule 7-2(d), the plaintiffs' failure to respond to its motion  
27 serves as their consent to granting the motion. ECF No. 28. However, I may not grant a summary  
28 judgment motion merely because the opposing party has not responded. *See Henry v. Gill Indus., Inc.*, 983  
F.2d 943, 949-50 (9<sup>th</sup> Cir. 1993).

1 State Farm argues that it is entitled to judgment as a matter of law because the plaintiffs  
2 failed to comply with their contractual obligation to cooperate with State Farm's investigation  
3 before taking legal action against the insurer. Specifically, State Farm asserts that before the suit  
4 was filed, it received no response to numerous requests for authorization to obtain medical  
5 records or medical history questionnaires. According to State Farm, the plaintiffs' failure to  
6 cooperate relieves the company of its obligation to pay. Alternatively, State Farm argues that  
7 Charlette's claims for special damages beyond payment for the chiropractor she saw directly after  
8 the accident should be dismissed because the plaintiffs cannot provide evidence that subsequent  
9 treatment was required as a result of the accident.

10 In the absence of a genuine dispute of fact, the interpretation of an insurance policy is a  
11 matter of law for the court to decide. *Nationwide Mut. Ins. Co. v. Moya*, 837 P.2d 426, 428 (Nev.  
12 1992). Nevada courts will construe insurance policies like any other contract, and will enforce  
13 them as written as long as there are no countervailing reasons or ambiguity. *Ellison v. Cal. State*  
14 *Auto Ass'n.*, 797 P.2d 975, 977 (Nev. 1990). They will also "broadly interpret clauses providing  
15 coverage, to afford the insured the greatest possible coverage," and narrowly interpret clauses  
16 excluding coverage against the insurer. *Fed. Ins. Co. v. Am. Hardware Mut. Ins. Co.*, 184 P.3d  
17 390, 392 (Nev. 2008). Therefore, if an insurance policy is ambiguous, it must be resolved in  
18 favor of the insured. *Id.*

19 In Nevada, if an insured party fails to comply with an unambiguous, express condition  
20 precedent in her policy, coverage may be precluded as a matter of law regardless of whether the  
21 insurer was prejudiced. *Las Vegas Star Taxi, Inc. v. St. Paul Fire & Marine Ins. Co.*, 714 P.2d  
22 562, 562-64 (Nev. 1986). An express condition need not be labeled as such, but the policy's plain  
23 language must show that a term is a condition of coverage that must be complied with to render  
24 the insurer liable under the policy. *Id.* at 562-63; *see also Holland v. State Farm Mut. Auto Ins.*  
25 *Co.*, 2:12-cv-01058-LDG-GWF, 2014 WL 1268712, at \*5 (D. Nev. Mar. 27, 2014) (holding that  
26 the plaintiffs' refusal to cooperate with his insurer's investigations barred his lawsuit when a  
27 policy provision required the insured to cooperate before filing suit).

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1           The policy states that no legal action may be taken against State Farm until there has been  
2 full compliance with all of the policy's provisions. The policy's "Insured's Duties" section  
3 requires the insured to cooperate with State Farm, and when asked, assist the company by  
4 securing and providing evidence. ECF No. 27-3 at 36-37. Furthermore, persons making a claim  
5 under a UMVC policy must provide written authorization for State Farm to obtain medical bills,  
6 medical records, and any other necessary information. *Id.* The policy's plain language requires  
7 cooperation with the Insured's Duties section before the insured may sue State Farm. *Id.* The  
8 policy thus unambiguously requires the insured to cooperate and provide medical record  
9 authorization prior to filing suit as a condition precedent for receiving policy benefits.

10           State Farm requested the plaintiffs' injury questionnaires, medical authorization forms,  
11 and medical provider lists multiple times for over a year and a half after the accident. The  
12 company's claim file indicates that one of those requests did not reach Jessica. Nonetheless, State  
13 Farm requested the forms multiple times from the plaintiffs and their counsel. In doing so, State  
14 Farm reminded the plaintiffs and their counsel of the plaintiffs' duty to cooperate with the  
15 company by returning the completed forms. There is no evidence that either the plaintiffs or their  
16 counsel responded to State Farm's communications by stating they had already provided that  
17 information.

18           Even accepting Jessica's vague testimony as true that she believed she filled out and  
19 returned some of the forms, there is no evidence of whether she filled out and returned those  
20 forms before or after she filed suit. Additionally, she did not recall filling out and returning the  
21 list of current and past medical providers and health carrier information, and there is no evidence  
22 she did. Charlette stated that if any requests were made of her to fill out paperwork, she  
23 complied, and there is evidence that State Farm received Charlette's injury questionnaire. But  
24 there is no evidence that she completed and returned the provider list and the medical records  
25 authorization and did so before she filed suit.

26           State Farm has satisfied its initial burden to show that no genuine dispute exists as to the  
27 plaintiffs' failure to comply with their contractual duties because the plaintiffs did not cooperate  
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1 before they filed suit. The plaintiffs have not responded with any specific facts to show that a  
2 genuine dispute exists. Nor does the evidence before me demonstrate any such facts. Because  
3 the plaintiffs did not comply with an express condition precedent of the policy, State Farm is  
4 entitled to summary judgment on the remaining breach of contract claim.

5 **III. CONCLUSION**

6 **IT IS THEREFORE ORDERED** that State Farm's motion for summary judgment (**ECF**  
7 **No. 27**) is **GRANTED**. The Clerk of Court is directed to enter summary judgment in favor of  
8 State Farm Mutual Automobile Insurance Company and against plaintiffs Jessica Auriemma and  
9 Charlette Auriemma.

10 **IT IS FURTHER ORDERED** that the plaintiffs' motion to remand (**ECF No. 29**) is  
11 **DENIED**.

12 **IT IS FURTHER ORDERED** that the plaintiffs' motion to continue (**ECF No. 30**) is  
13 **DENIED**.

14 DATED this 3<sup>rd</sup> day of August, 2016.

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18 ANDREW P. GORDON  
19 UNITED STATES DISTRICT JUDGE  
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